

CHAPTER 5

TRANSCRIPTS

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CHAPTER 5

PREPARATION OF THE TRANSCRIPT OF THE EVIDENCE

Introduction

In Indiana preparation of transcripts is controlled by the Indiana Rules of Appellate Procedure. App. R. 27-30. Transcripts may be submitted in electronic format and the standards for this process have been adopted by the Indiana Division of State Court Administration and are published with the Appellate Rules.

The product of a court reporter's work is the transcript. The importance of a high quality and timely prepared transcript cannot be overemphasized. Delayed preparation and delivery of transcripts is a hindrance to the final disposition of cases.

This chapter addresses how transcripts are requested, prepared, certified and submitted for appeal. A court reporter should follow the requirements of the Indiana Rules of Appellate Procedure when preparing a transcript for **any** purpose.

Overview - The Transcript in Relation to the Appellate Process

The court reporter should review the definitions of the word "record" and the phrase "Record on Appeal" that appear in Chapter 1.

The transcript becomes one (1) of the four (4) major sections of the Record on Appeal, which consists of volumes containing the transcript of evidence, exhibits, table of contents, and the Clerk's Record. Once separately certified as accurate and complete by the court reporter, the transcript is filed with the clerk of the court. See IC 33-15-23-5 and App. R. 11.

It is the obligation of the appellant (or appellant's counsel) to prepare the appendix containing the table of contents and copies of applicable documents. See App. R. 49-51.

Initiation of an Appeal - The Notice of Appeal

An appeal is initiated by the filing of a Notice of Appeal with the clerk of the trial court. See Chapter 2. The burden of requesting an adequate Record on Appeal is imposed upon the party taking the appeal.

The court reporter must establish lines of communication with the judge, with other members of the judge's staff, and with the clerk of the court so that prompt notification of the filing of a Notice of Appeal may be procured. The Clerk is responsible to immediately provide the reporter with a copy of the Notice of Appeal. App. R. 10.

The court reporter's duty to prepare a transcript is strictly limited by the language contained in the body of the Notice of Appeal. The Notice may either seek preparation of a

transcript, which contains only selected portions of what transpired or seek the preparation of a transcript containing all matters where the court reporter made a record in a particular proceeding. See App. R. 9 (F).

If any interpretation question arises from the language of a Notice of Appeal, the court reporter should consult with the appellant (or appellant's counsel). For the protection of the reporter, it is recommended that resolution of these questions be done in writing.

The court reporter's contract is formed with the person or entity that files the Notice of Appeal. The person or entity that files the Notice is liable for the cost of preparation. The attorney who files a Notice is personally liable for the cost of preparation.

Supplementation of the Record on Appeal

App. R. 9 provides ...

G. Supplemental Request for Transcript. Any party to the appeal may file with the trial court clerk or the Administrative Agency, without leave of court, a request with the court reporter or the Administrative Agency for additional portions of the Transcript.

The appellate court may issue an order for supplementation of the transcript. Questions concerning interpretation of the order should be addressed to the Clerk of Supreme Court and Court of Appeals. A supplemental transcript must be prepared in compliance with the order, is separately certified by the court reporter and filed with the Clerk of the Court. See App. R. 11(A).

Preparation of the Transcript - What is Verbatim?

Overview

In Chapter 4, the problem of "what is verbatim" was addressed in context of the court reporter's task in making a record. Having recorded all questions asked, all answers given at a proceeding, the court reporter is again confronted with the "verbatim" question during the process of preparing the requested transcript after receipt of a Notice of Appeal.

The goal is to produce a clear and readable transcript that accurately demonstrates exactly what transpired during the course of the proceeding. The readability of the transcript must be balanced against accuracy of the transcript. Not all judges and court reporters agree on where a balance lies between these concepts. All agree that it is the duty of the court reporter to produce a transcript that is both accurate and complete.

The question of editing or adjusting what was recorded to achieve a readable transcript is at the heart of the issue. For example, if the court reporter elects to "dress up" the transcript by correcting obvious grammatical errors or interpreting a dialect, is accuracy lost?

In order to resolve a "verbatim" dispute, the court reporter may use both common sense and discretion, involving a feeling for the language, to produce a readable and coherent transcript. The exercise of common sense and discretion generally requires the exact transcription of what was recorded during the process of making a record. Any deviation made should not alter or distort the accuracy of the content of the transcript.

The present practice is not to edit, but in fact produce a transcript that contains that which was recorded word for word during the process of making a record. Extreme caution should be exercised by the court reporter to avoid inadvertently editing or altering the substance of the proceedings. The verbatim problem may arise in the preparation of a transcript that contains opening statements of counsel, final arguments of counsel, and counsel's objections to both preliminary and final instructions.

Grammatical Errors - "Sic"

The present practice is that grammatical corrections should not be made even if the changes would not have any impact on the total context. Ungrammatical speech or mispronounced or nonexistent words contained in counsel's question or in the witness's answer may be important. The court reporter should refrain from interpreting the intent or meaning of the speaker's choice of language. The existence of the inaccuracy may be noted by use of "(sic)" immediately after each inaccuracy. Use of "(sic)" prevents the reader from assuming that a court reporter made an uncorrected transcription error.

The use of "(sic)" indicates court reporter awareness that some improper condition exists with the language contained on the recording and signifies that the court reporter used best efforts to avoid mistakes during the transcription process. The use of "(sic)" emphasizes that incorrect language was accurately recorded. This practice is recommended over the practice of correcting any obvious mistakes during the transcription process. Before using "(sic)", the court reporter should:

1. determines if, in fact, an error was made;
2. determine whether the context of the surrounding record itself corrects the error; and
3. consult with the judge in the event that a misstatement by the judge is involved.

Accents

When testimony contains dialect or unfamiliar accents, it may be transcribed phonetically noted by the use of "(phonetic)" following the word or phrase in question.

Foreign Language Translation

When testimony is presented with the assistance of a translator, the testimony of the translator concerning their qualifications should be part of the transcript of evidence. Translation may be noted through the use of a parenthetical phrase; e.g. "(Translation English to (language))".

Profanity

A witness, a party, an attorney or the judge may occasionally use profanity in court. Recorded profanity should appear in transcripts rather than substitution of the parenthetical phrase "[expletive deleted]".

Inaudible Portion of an Electronic Tape

As discussed in Chapter 4, the problem of indiscernible or inaudible words and phrases may occur. These may appear as gaps in the court reporter's notes or on the court reporter's recording. The fact that something was said but what was said could not be heard or understood is a matter of record. The present practice is to prepare a parenthetical note in the transcript that identifies that something is missing. The parenthetical words "(indiscernible)", "(unintelligible)", or "(inaudible)" may be used to indicate existence of the problem.

In the event lengthy passages are inaudible, a court reporter should confer with the judge first, and in event that permission is granted, a court reporter may then consult with the attorneys and the attorneys. An attempt should be made to reconstruct the missing passage to assist appellate review.

The court reporter may elect to combine one or more words indicating existence of an inaudibility problem with use of the word "(sic)".

Appearance and Quality of the Transcript

Punctuation and Capitalization

Naturally, clearly recorded words of each speaker should be transcribed correctly and accurately. In preparing the transcript, decisions on capitalization, compound words, punctuation and numbers must be correct. Since there are many different ideas on proper capitalization, punctuation, compounding of words, and grammar, a court reporter may consult and follow a standard and accepted published authority, such as Strunk & White, Court Reporting Grammar and Punctuation by Diane Castilaw-Palliser or Morson's English Guide for Court Reporters by Lillian I. Morson.

Misspellings

A transcript should be devoid of misspellings. Although computer spell check programs are extremely helpful, use does not ensure accuracy. Some words may be spelled correctly but are erroneous in context; e.g. "statue" for "statute", "four" for "for", "pubic" for "public" and "trail" for "trial".

After computerized spell checking has been completed, each transcript must be proofread by the court reporter. Use of the computer word search function may aid a court reporter during the proofreading process.

If a typist has prepared the transcript, the transcript should be checked against the notes or the tape recording made by the court reporter that actually undertook the process of making a record of the proceeding. A detailed log of the trial will expedite this process. See Chapter 4.

Corrections should not be made in pen and ink. If a page contains an error, the error should be corrected and a new replacement page should be reprinted.

Technical Requirements

App. R. 2 (L), 28, 29, 30 and Appendix B provide as follows:

Rule 2. Definitions

(L) Record on Appeal. The Record on Appeal shall consist of the Clerk's Record and all proceedings before the trial court or Administrative Agency, whether or not transcribed or transmitted to the Court on Appeal.

Rule 28. Preparation of Transcript in Paper Format by Court Reporter

A. Paper Transcript. The court reporter shall prepare the Transcript as follows:

- (1) *Paper.* The Transcript shall be prepared upon 8 ½ x 11-inch white paper.
- (2) *Numbering.* The lines of each page shall be numbered and the pages shall be numbered at the bottom. Each page shall contain no less than twenty-five (25) lines unless it is a final page. The pages of the Transcript shall be numbered consecutively regardless of the number of volumes the Transcript requires.
- (3) *Margins.* The margins for the text shall be as follows:
 - Top margin:** one (1) inch from the edge of the page.
 - Bottom margin:** one (1) inch from the edge of the page.
 - Left margin:** no more than one and one-half (1-1/2) inch from the edge of the binding.
 - Right margin:** one (1) inch from the edge of the page.
 - Indented text:** no more than two (2) inches from the left edge of the binding.
- (4) *Header or Footer Notations.* The court reporter shall note in boldface capital letters at the top or bottom of each page where a witness's direct, cross, or redirect examination begins. No other notations are required.

(5) *Typing.* The typeface shall be no larger than 12-point type. Line spacing shall be no greater than double-spacing.

(6) *Binding.* The Transcript shall have a front and back cover and shall be bound at the left no more than one-half (1/2) inch from the edge of the page. The Transcript shall be bound using any method, which is easy to read and permits easy disassembly for copying. No more than two hundred fifty (250) pages shall be bound into any one volume.

(7) *Title Page and Cover.* The title page of each volume shall conform to Form # App. R. 28-1, and the cover shall be clear plastic.

(8) *Table of Contents.* The court reporter shall prepare a table of contents listing each witness and the volume and page where that witness' direct, cross, and redirect examination begins. The table of contents shall identify each exhibit offered and shall show the Transcript volumes and pages at which the exhibit was identified and at which a ruling was made on its admission in evidence. The table of contents shall be a separately bound volume.

B. Certification. The court reporter shall certify the Transcript is correct, and file the certificate with the trial court clerk or appropriate administrative officer.

C. Copy of Paper Transcript in Electronic Format. A copy of the Transcript in electronic format shall accompany all paper Transcripts generated on a word processing system.

Rule 29. Exhibits

A. Documentary Exhibits. Documentary exhibits, including testimony in written form filed in Administrative Agency proceedings and photographs, shall be included in separately-bound volumes that conform to the requirements of Rule 28(A)(6). The court reporter shall also prepare an index of the exhibits contained in the separately bound volumes, and that index will be placed at the front of the first volume of exhibits.

B. Non-documentary and Oversized Exhibits. Non-documentary and oversized exhibits shall not be sent to the Court, but shall remain in the custody of the trial court or Administrative Agency during the appeal. Such exhibits shall be briefly identified in the Transcript where they were admitted into evidence. Photographs of any exhibit may be included in the volume of documentary exhibits.

Rule 30. Preparation of Transcript in Electronic Format Only

A. Preparation of Electronic Transcript. In lieu of or in addition to a paper Transcript as set forth in Rule 28, with the approval of the trial court, all parties on appeal, and the Court on Appeal, the court reporter may submit an electronically formatted Transcript in accordance with the following:

- (1) *Approval by Court on Appeal.* At the time the Notice of Appeal is filed with the trial court clerk, all parties to the appeal may jointly move the Court on Appeal to accept an electronically formatted Transcript. The motion must acknowledge the willingness of the trial court to provide a Transcript in an electronic format consistent with these rules.
- (2) *Transcription of Evidence.* Consistent with the standards set forth in this rule, the court reporter shall transcribe the evidence on an electronically formatted medium (such as disk, CD-ROM, or zip drive) thereby creating an electronic Transcript. The electronic Transcript shall be paginated and the lines sequentially numbered. Marginal notations are not required, but the electronic Transcript shall designate the point at which exhibits, by exhibit number, are considered at trial.
- (3) *Technical Standards.* Standards for CD-ROM and disk size, formatting, transmission and word processing software shall be determined by the Division of State Court Administration. The Division of State Court Administration shall publish the established standards and distribute copies of such rules to all trial court clerks and Administrative Agencies.
- (4) *Exhibits.* Rule 29 shall govern the submission of exhibits. Exhibits governed by Rule 29(A) shall be arranged in numerical order, indexed and included in a separate bound volume. See Rule 28(A)(6).
- (5) *Labeling.* The court reporter shall transcribe the evidence on sequentially numbered disks in the event more than one disk is required for complete transcription. Multiple disks or sets of sequentially numbered disks shall be prepared and designated as "official record," "official working copy," "court reporter's copy," or "party copy." Each disk shall be labeled to

identify the names of the parties and case number in the proceedings in the trial court; the Court on Appeal case number, if known; the disk number, if more than one (1) disk is required for a complete Transcript; the signature of the court reporter; and whether the disk is the official record, official working copy, court reporter's copy, or party copy. *Certification of Electronic Record*. The signature of the court reporter on the disk shall constitute the reporter's certificate.

B. Submission of Electronic Transcript. Following certification of the Transcript, the court reporter shall seal the official record and official working copy in a clear, sturdy case that permits examination of the contents and makes tampering evident. The court reporter shall retain the court reporter's copy of the electronic Transcript and provide each party with the party's copy of the electronic Transcript. The sealed electronic Transcript copies, paper exhibits, and photographic reproductions of oversized exhibits {if included pursuant to Rule 29(a)} shall be filed with the trial court clerk in accordance with Rule 11.

C. Processing of Electronic Transcript by Clerk. Upon receipt of an electronic Transcript, the Clerk shall file stamp the disks and shall transmit and microfilm the record in a format as directed by the Court. Standards for the microfilm process shall conform to Administrative Rule 6. The official copy will remain in the custody and control of the Clerk pending the appeal. The official working copy will be employed by the Court on Appeal during its review of the case. Following the completion of the case, a paper or microfilm copy of the electronic Transcript shall be indexed as part of the case.

Appendix B – Standards for Preparation of Electronic Transcripts Pursuant to Appellate Rule 30.

The following standards shall apply when the Court on Appeal grants a motion pursuant to [Appellate Rule 30\(A\)\(1\)](#) to accept an electronically formatted Transcript.

Standard 1. The electronic Transcript must comply with all of the requirements set out in [Appellate Rule 30](#).

Standard 2. The Transcript of the evidence may be prepared in any commercially available word processing software system.

Standard 3. Pursuant to [Appellate Rule 30\(A\)\(5\)](#), the court reporter shall transcribe the evidence on sequentially numbered disks or sets of sequential numbered disks shall be prepared and designated as:

- a) "Official record"
- b) "Official working copy"
- c) "Court reporter's copy"
- d) "Party copy"

The court reporter must convert the "official record," the "official working copy" and the "party copy" into Adobe Portable Document Format (PDF) and transmit these copies in PDF format as set out in [Appellate Rule 30](#). Standard 4. [Pursuant to Appellate Rule 30\(B\)](#), the court reporter shall retain a signed, read only "court reporter's copy" of the electronic Transcript in the original word processing version used for the transcription.

Form of the Transcript

Binders

The Court Reporter has the duty to prepare proper binders and covers for each volume of the transcript, Table of Contents and Exhibits, pursuant to App. R. 28 (A)(6).

Arrangement

The usual arrangement of a transcript follows the chronological presentation of each proceeding. A sample chronological sequence for a criminal or civil jury trial is shown below as follows:

- a. (optional) introductory paragraph followed by any motions and rulings made - motions in limine; motion for separation of witnesses.
- b. (optional) judge administers oath to entire petit juror panel.
- c. (optional) voir dire qualification examination of each potential juror begins and ends (showing strikes).
- d. (optional) judge administers oath to selected jurors now called the jury.
- e. judge reads preliminary instructions.
- f. (optional) opening statements by each counsel; case law makes it likely that arguments will be recorded.
- g. motion for separation of witnesses must be made or right is waived; judge issues instructions to plaintiff's counsel or to the prosecutor; first witness is called; judge may administer the oath to all witnesses present as a group.
- h. judge may administer oath to witness followed by:
 - (1) direct examination.
 - (2) cross-examination.
 - (3) re-direct examination.
 - (4) re-cross-examination.

- (5) counsel states "No further questions" - judge states "call your next witness".
- i. if jury separates for meals and if jury separates at end of the day, judge gives daily juror admonishment.
- j. plaintiff or state rests.
- k. defense motions, arguments, and the judge's rulings.
- l. defense calls first witness; judge may administer oath to witness followed by:
 - (1) direct examination.
 - (2) cross-examination
 - (3) re-direct examination.
 - (4) re-cross-examination
 - (5) defense counsel states "No further questions" - judge states "call your next witness".
- m. defense rests.
- n. rebuttal and surrebuttal evidence.
- o. plaintiff and defense motions, arguments, and announced rulings.
- p. arguments on instructions; instructions either given, given as modified, refused, or withdrawn; and objections of parties to instructions given or given as modified. In criminal trials; judge's signature is obtained.
- q. (optional) final arguments; case law makes it likely that arguments will be recorded.
- r. judge reads final instructions.
- s. (optional) bailiff sworn.
- t. jury deliberation commences.
- u. any matters arising during deliberation.
 - (1) questions.
 - (2) instructions re-read
 - (3) special jury voir dire after any period of jury separation.
- v. jury returns verdict; judge, sworn bailiff, court reporter, counsel and parties return to courtroom.
- w. verdict delivered to judge and reviewed by judge for consistency; judge announces verdict; questions resolved by either more deliberations or objections made.
- x. jury polled.
- y. defense or plaintiff motions renewed.
- z. motion for entry of judgment on the verdict or as modified. If a criminal conviction, Crim. R. 11 sentencing advisement given or bifurcated trial commences in the event that the issue involves either sentence enhancement or death.
- aa. jury discharged (either a verdict has been reached or the jury has not been able to reach a decision).

Interspersed among the above items are objections, rulings of the court on evidence issues, offers to prove [T.R. 43(C)], and other colloquy of counsel. See IC 35-

37-2-2 (general outline of criminal jury trial; no statute generally outlines a civil jury trial).

Examination of Witnesses

Examination occurs in the following order: direct examination, cross-examination, re-direct examination, and re-cross-examination.

At the end of all the testimony by plaintiff or by the State, counsel will rest his or her case. This occurrence ***must*** be noted in the court reporter's log and index.

Each defendant's case will follow the plaintiff's or the State's case. The same format is used -- an introductory paragraph, the sworn testimony of each witness, and the presentation of exhibits. A defendant may elect not to call any witnesses or offer any exhibits.

When the defendant presents his or her case, the defendant's examination of the witness becomes "direct examination", whereas plaintiff's or State's examination of the witness becomes "cross-examination".

After the defendant rests, plaintiff or the State has the opportunity to present rebuttal evidence. When either the plaintiff, the State, or defendant rest, counsel should state that the decision to rest is "subject to the right to present rebuttal (or surrebuttal) evidence." The judge will determine whether to permit rebuttal or surrebuttal evidence in the absence of an express reservation of the right to present such evidence by counsel.

In the event that rebuttal evidence is presented plaintiff or the State again conducts the "direct examination" and defendant conducts the "cross-examination". At the conclusion, counsel will rest.

Surrebuttal evidence may be presented by the defendant in rebuttal to plaintiff's or State's rebuttal evidence. The roles reverse -- defendant conducts the "direct examination" on surrebuttal, and the plaintiff or the State conducts the "cross-examination". At the conclusion, counsel will rest.

Introductory Statement

After a title page, the transcript begins with introductory paragraphs. The contents of the introductory paragraphs may include: (1) the date, place, and time of the proceeding; (2) the identity of the judge and the court reporter; (3) the identity of each party and each counsel (if applicable).

Question and Answer Format; Colloquy of Counsel

A transcript is composed chiefly of testimony and colloquy. Testimony is the sworn responses of witnesses, usually in the form of answers to questions. Colloquy is

the informal conversation, arguments (or other unsworn statements) that occurs during the proceeding: (1) between counsel and counsel, and (2) between counsel and the judge or (3) between counsel and/or the judge and the witness. Samples of colloquy include objections, rulings on objections, motions to strike, offers to prove and arguments.

On the whole, the use of the Question and Answer format for making a record of the testimony of witnesses makes a transcript easier to prepare and to read.

Colloquy often intervenes between a question directed to a witness and the answer of the witness. The court reporter should differentiate between testimony and colloquy by using a consistent transcription format. For example:

DIRECT EXAMINATION
QUESTIONS BY (COUNSEL):

Q.

A.

Q.

A.

The reader will interpret this language that until further notice, every Question will be asked by the attorney whose name appears and every Answer will be made by the identified and sworn witness.

Often, a questioner will participate in colloquy directed to opposing counsel and directed to the judge. Occasionally, a witness and the questioner will engage in colloquy as both struggle to reach a question that is understood by the witness. The witness may engage in colloquy with the judge. Sometimes colloquy may merge with Question and Answer format in such a way that it is difficult to find a subtle spot to note the existence of a change without creating confusion on the part of the reader. The transition from testimony to colloquy should be handled as follows:

DIRECT EXAMINATION
QUESTIONS BY (COUNSEL)

Q.

A.

Q. Who did you see beating the woman?

WITNESS: Judge, I really would prefer not to say who it was.

COUNSEL: Your Honor, please instruct the witness to answer my question.

THE COURT: Just answer the question, please.

A. It was the defendant.

Preliminary Questions

After a questioner has directed a question to the witness, opposing counsel may object and request permission from the judge to ask preliminary questions. This procedure may be used when an exhibit has been offered into evidence in order to clarify whether a proper foundation for admission has been established. Counsel may refer to such questioning as "permission to voir dire the witness".

Preliminary questions should begin directly below the phrase: PRELIMINARY QUESTIONS, QUESTIONS BY (COUNSEL).

Questions by the Judge

The judge possesses limited authority to directly question the witness. Counsel may interpose an objection to this procedure. In extreme cases, a counsel may move for a mistrial. The court reporter must make a record of any objection or of any motion for a mistrial.

Except when an expert witness is called to testify by the Court, questions by the Judge are considered colloquy to be handled as shown above.

Voir Dire

In the event a Notice of Appeal calls for the transcription of voir dire testimony, the question and answer format should be used if the voir dire examination was conducted individually. Colloquy format may also be used. The counsel will usually state "pass the juror" or "pass the juror for cause" at the conclusion of questioning. If the judge conducts the examination, THE COURT is shown as the questioner.

The court reporter should determine how questions asserted to the group are treated. A parenthetical note may be used to show a group response; e.g. PROSPECTIVE JURORS: Yes. The judge may make a statement describing the group's response to be treated as colloquy.

Peremptory challenges may be made at a sidebar conference. The court reporter should record all sidebar conferences unless directed otherwise by the Court. If the record of the sidebar conference is transcribed, it is treated as colloquy between counsel and the judge.

Parenthetical Remarks

Colloquy also includes parenthetical remarks. Parenthetical remarks contained in a transcript are the court reporters own words enclosed in parentheses, which notes the occurrence of some important action, or event that occurs during a proceeding that was not transcribed.

Each court reporter develops a style of using parenthetical remarks, resulting in a wide variety of approaches. For the purpose of this Handbook, the following guidelines were devised from discussion with a number of court reporters:

1. Parenthetical remarks should be used as sparingly as possible. When an action is made clear by the speaker's own words, no parenthetical remark should be used.
2. Parenthetical remarks should be as short as possible and each should contain clear, formal English.

Some of the more common parenthetical remarks consistent with the above guiding principles are listed below as follows:

Sample parenthetical remarks include:

- (a) [motions in limine filed, heard and granted]
- (b) [judge administers oath to petit juror panel]
- (c) [voir dire examination occurs]
- (d) [jury selected and sworn]
- (e) [jury separates; admonishment given]
- (f) [argument heard and objections made regarding preliminary instructions]
- (g) [judge reads preliminary instructions 1, 2, 3, 4]
- (h) [counsel make and conclude opening statements]
- (I) [motion for a separation of witnesses made and granted].
- (j) [name of counsel] made his opening statement to the jury.)
- (k) [name of counsel] made his opening statement to the jury, in the course of which the following occurred:)
- (l) [name of counsel] read to the jury from Plaintiff's Exhibit 1.)
- (m) [name of counsel] read to the jury from Plaintiff's Exhibit 1 as follows:)
- (n) (The jury left the courtroom at 10:30 p.m.)
- (o) (The jury returned to the courtroom at 10:45 p.m.)
- (p) (A recess was taken at 12:00 noon)
- (q) (There was a discussion off the record.)
- ® (There was a discussion off the record at the bench among the Court and [name of counsel]. [Name of counsel] was silent.)
- (s) (The witness was excused.)
- (t) (An adjournment was taken to 10 a.m.)
- (u) (Witness fainted.)
- (v) (The witness gestured toward door.)
- (w) (The witness nodded.)

In the event an administered oath is not transcribed, a parenthetical note that plaintiff's first witness is called and sworn is used immediately before the transcription of the questions and answers begins.

Sometimes, the judge may elect to swear several witnesses at one time, rather than individually as each takes the stand. This may happen in the event that the judge has granted a motion made by the defense for a separation of the witnesses. In the transcript, the parenthetical note that the witness is sworn should appear immediately preceding each witness's testimony.

Reading Back

A court reporter is often asked to read back either a question directed to a witness or the answer of a witness to a question. During the preparation of a transcript, a question inevitably arises whether to restate the Question and/or Answer, or merely to put in a parenthetical remark; an example might be: (Thereupon, the last question was read). Another practice is to re-type the question and the answer as colloquy rather than use a parenthetical remark.

Testimony Stricken from the Record

Any testimony ordered stricken from the record by the judge or by counsel remains a part of the court reporter's record. It should be included in the transcript.

Exhibits

Appellate Rule 29 requires exhibits be bound in a separate volume. Small exhibits may be mounted upon a separate sheet of paper. Original exhibits and pictures should be included in a transcript whenever available. Copies may suffice in situations where permission has been granted by the judge to withdraw the original and substitute a copy.

In the transcript, a parenthetical remark should note the ruling upon an offered exhibit. Sample language appears below:

STATE'S EXHIBIT NUMBER ONE, HAVING BEEN OFFERED, WAS
ADMITTED INTO EVIDENCE WITHOUT OBJECTION BY THE
DEFENDANT.

STATE'S EXHIBIT NUMBER TWO, HAVING BEEN OFFERED, WAS
DENIED ADMISSION UPON OBJECTION BY THE DEFENDANT.

Non-documentary and oversized exhibits shall not be sent to the appellate court but shall remain in the custody of the court reporter until the appeal is terminated. See App. R. 29 (B). The court reporter may insert a photograph of an exhibit.

Video and audiotapes are offered as exhibits during proceedings. These exhibits may be included in the exhibit volume.

Any exhibits offered, but refused admission into evidence by ruling of the judge, should be included in the exhibit volume.

Testimony of a Witness by Deposition

When testimony of a witness is presented by sworn deposition (written or video), there are two methods utilized to show inclusion in a transcript.

In the event a paper transcription of the deposition has been admitted into evidence, it may be treated as any other exhibit and included as any other exhibit.

In the event the deposition was not offered and admitted as an exhibit but was read aloud or played during the proceeding, the testimony should be presented in the transcript in the Question and Answer format but preceded by the following form of parenthetical remark:

THEREUPON THE DEPOSITION OF JANE DOE WAS READ ALOUD,
WITH QUESTIONS BEING READ BY MR. SMITH, AND RESPONSES
READ BY MS. WILLIAMS.

Another common exhibit, which generates confusion, is testimony from a transcript from an earlier trial. If testimony from the former proceeding is read aloud, the testimony is treated as deposition testimony read to the jury but if it was offered and admitted as an exhibit it is treated as any other exhibit.

Transcript - The Ending Entry

At the conclusion of the trial, the court reporter should indicate the end of the proceedings, for example:

"AND THAT IS ALL THE EVIDENCE
RECORDED IN THIS CAUSE"

Certification of the Transcript

After the transcript has been prepared, spell-checked and proofread, the court reporter certifies the transcript as full, true, accurate, correct and complete. The court reporter's certificate must indicate: (1) that the court reporter has reviewed the transcript, and (2) that the transcript constitutes a complete and correct account of the proceeding, and (3) that the transcript was prepared in compliance with the directives of the Notice of Appeal. Form certifications may be found in the Appendix.

Occasionally, a certificate must be prepared for a transcript by a successor court reporter. A judge has authority under Crim. R. 5, Crim. R. 21, or T. R. 74 to appoint someone other than the regular court reporter to transcribe a hearing or trial (using electronic audio tape as a method to make the record of the proceeding) and to provide certification. The successor court reporter should tailor the certificate to indicate successor status.

Backlog

When a court reporter has a backlog of Notices of Appeal, Crim. R. 5 or T. R. 74 provides a cure. These rules allow a judge to farm out Notices to others. In the event that the court reporter who made the record in a particular case cannot prepare the transcript by the deadline established by the Supreme Court, the Indiana Supreme Court may issue orders, which require the judge to assign preparation of a transcript to another court reporter. See Chapter 2.

Time and Extensions of Time

The court reporter owes an ethical duty and a statutory duty to supply the transcript as soon as "practicable" after the Notice of Appeal is filed. See IC 33-15-23-5 and Ind. Judicial Conduct Canon 3(C)(2).

Often, a court reporter cannot complete the preparation of a transcript within 90 days. In such cases, the court reporter must file a Verified Motion for Extension of Time to File Transcript with the Court of Appeals or Supreme Court. See Form App. R. 11-2.

Retention of a Copy of the Transcript

The court reporter should always keep a copy of each transcript either in paper form or on computer disk. See Crim. R. 5, 10, Admin. R. 7, Chapter 2 and Chapter 6.

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